Supreme Court, U.S.
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No. _____

UNITED STATES SUPREME COURT
OCTOBER 1993 TERM

Matt T. Kokkonen
Petitioner

vs.

Guardian Life Insurance Company of America, et al.
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth District

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PETITION FOR WRIT OF CERTIORARI

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31 pp

QUESTION PRESENTED FOR REVIEW

1. Does a federal district court have inherent subject matter jurisdiction to hear post-dismissal motions to enforce settlement agreements that are no longer otherwise subject to its jurisdiction?; or more specifically, does a federal district court have subject matter jurisdiction to enforce a settlement agreement entered into between the parties when: 1) the case is no longer pending before the court at the time the court issued the order, having been dismissed with prejudice prior to the application for enforcement of the settlement agreement, 2) the settlement agreement has never been incorporated into an order or judgment of the court disposing the action, 3) the court has not expressly retained jurisdiction over the action, and 4) no other independent grounds for federal court jurisdiction to enforce the agreement exist? A conflict exists among the United States Courts of Appeal on this issue.

PARTIES TO THE APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The parties to the appeal in the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") were Matt T. Kokkonen as Plaintiff/Appellant and The Guardian Life Insurance Company of America as Defendant/Appellee. The Guardian Insurance and Annuity Corporation and The Guardian Investor Services Corporation were listed on the caption to the appeal as Defendants/Appellees; however, these parties had been named inadvertently and were dismissed from the appeal to the Ninth Circuit.

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A. Unpublished Opinion by the United States Court Of Appeals For The Ninth Circuit..... A-1

TABLE OF AUTHORITIES

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Fairfax Countywide Citizens Ass'n v.
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571 F.2d 1299 (4th Cir.), cert. denied
439 U.S. 1047, 99 S.Ct. 722, 58 L.Ed.2d. 706 (1978)

Harman v. Pauley,
678 F.2d 479 (4th Cir. 1982)

Hinsdale v. Farmers National Bank & Trust Co.,
823 F.2d 993 (6th Cir. 1987)

Kent v. Baker,
815 F.2d 1395 (11th Cir. 1987)

Londono v. City of Gainesville,
768 F.2d 1223 (11th Cir. 1985)

Mathewson Corp. v. Allied Marine Industries, Inc.,
827 F.2d 850 (1st Cir. 1987)

McCall-Bey v. Franzen,
777 F.2d 1178 (7th Cir. 1985)

Stipelcovich v. Sand Dollar Marine, Inc.,
805 F.2d 599 (5th Cir. 1986)

U.S. v. Baus,
834 F.2d 1114 (1st Cir. 1987)

United Steelworkers v. Libby, McNeil & Libby,
895 F.2d 421 (7th Cir. 1990)

Village of Kaktovik v. Watt,
689 F.2d 222 (D.C. Cir. 1982)

Warner v. Rossignol,
513 F.2d 678 (1st Cir. 1975)

Wilkinson v. FBI,
922 F.2d 555 (9th Cir. 1991)

I.

REPORTING OF THE OPINION DELIVERED BY THE NINTH CIRCUIT

On May 18, 1993, the Ninth Circuit delivered a memorandum in Matt T. Kokkonen v. Guardian Life Insurance Company of America, et al., which was on appeal before that court, which it indicated was not appropriate for publication. A copy of this memorandum is included in the appendix included herewith.

II.

STATEMENT OF JURISDICTIONAL GROUNDS FOR PETITION

Jurisdiction of this Court is invoked pursuant to Rule 10.1(a) of the Rules of the Supreme Court of the United States because a direct conflict between United States Circuit Courts of Appeal involving federal court subject matter jurisdiction exists.

In particular, on May 18, 1993, the Ninth Circuit rendered its decision and entered its judgment in the action Kokkonen v. The Guardian, et al.. In this decision, the Ninth Circuit held that its ruling in Wilkinson v. FBI, 922 F.2d 555 (9th Cir. 1991) was dispositive on the issue of inherent subject matter

jurisdiction to enter post-dismissal enforcement orders, concluding that a federal district court has jurisdiction under its "inherent supervisory power" to enforce a post-dismissal motion even if no other grounds for federal court jurisdiction exist.

This decision of the Ninth Circuit is in direct conflict with decisions rendered by, at least, the United States Courts of Appeal for the Fourth, Fifth, Sixth and Seventh Circuits. These circuit courts of appeal have all held that federal district courts do not have inherent jurisdiction to enforce settlement agreements which terminated litigation before them and that some other independent ground for federal court jurisdiction must exist before a district court may enforce a settlement agreement in an action no longer pending before the court.

III.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

This action does not involve any constitutional provision, ordinances or regulations, other than the provisions located in 28 U.S.C. §§ 1331 et seq.

relating to federal court subject matter jurisdiction.

IV.

STATEMENT OF THE CASE

In April 1991, Matt T. Kokkonen ("Kokkonen") filed a civil complaint in California Superior Court against The Guardian Life Insurance Company of America ("Guardian") and other Guardian companies, for whom he had been a general agent and agent for approximately fourteen years, alleging various claims arising out of the termination of his agency agreements and his employment relationship with Guardian. Guardian removed the action to federal district court on the grounds of diversity jurisdiction, under 28 U.S.C. § 1332, and counter-claimed against Kokkonen. The action proceeded to trial on the merits in the United States District Court for the Eastern District of California.

Near the conclusion of the trial, but before the jury was instructed, Kokkonen and Guardian (the only defendant in the action at that time) reached a settlement of their respective claims and cross-claims. They stated their oral agreement regarding the terms of

the settlement on the record in chambers, and then filed a stipulation and order of dismissal mutually dismissing with prejudice their respective actions.

The oral settlement agreement between the parties was never reduced to writing, at the insistence of Guardian, nor was it ever incorporated into an order or judgment of the court. In fact, the oral settlement agreement was never even referred to in the order of dismissal. The district court made no other move to retain jurisdiction of the action and simply dismissed the case with prejudice by entering a Stipulation and Order of Dismissal on April 13, 1992.

On June 29, 1992, Guardian brought a motion before the district court to enforce the settlement agreement and seek sanctions, alleging that Kokkonen had failed to comply with certain terms of the settlement agreement. Among other arguments, Kokkonen argued in response and on appeal that the district court lacked subject matter jurisdiction to enforce the settlement agreement because the case was no longer pending before the court, the agreement was not

incorporated into an order or judgment of the court, the court had not retained jurisdiction over the action to hear enforcement disputes and the parties had not asked the court to do so, and the court had no independent basis for federal jurisdiction because the federal amount in controversy was not met. The district court, however, ruled that under Wilkinson it had jurisdiction to summarily enforce the settlement agreement and entered an order ordering Kokkonen to fully comply with certain terms of the agreement and to pay Guardian its fees and costs for filing the motion.

From this Order Enforcing Settlement Agreement, dated August 19, 1992, Kokkonen appealed to the Ninth Circuit on the sole issue of whether the district court had subject matter jurisdiction to issue the Order Enforcing Settlement Agreement.

V.

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE OF THE CLEAR SPLIT BETWEEN THE CIRCUIT COURTS OF APPEAL ON THE FUNDAMENTAL ISSUE OF FEDERAL COURT JURISDICTION

A. The Position Taken By the Ninth Circuit.

In its memorandum that it issued in the action Kokkonen v. The Guardian, et al. on appeal before it, the Ninth Circuit held: "Despite Kokkonen's arguments to the contrary, our holding in Wilkinson is dispositive of the issue of the district court's jurisdiction to enter an enforcement order, the sole issue in this appeal." (Memorandum, p.3.) It continued, stating that in Wilkinson, "we expressly held that the 'district court had jurisdiction to decide the motion[] under its inherent supervisory power.' 922 F.2d at 557. Similarly here, the district court properly assumed jurisdiction to decide Guardian's post-judgment motion." (Memorandum, p. 4.)

Thus, the Ninth Circuit clearly has established its position on the issue of federal subject matter jurisdiction to hear post-judgment motions even when no

other jurisdictional grounds are present.

B. The Position Taken by the Fourth, Sixth, Seventh and Other Circuit Courts of Appeal.

This position, however, is in direct contrast to the position taken by other United States Circuit Courts of Appeal, notably the Fourth, Sixth and Seventh Circuits. In Fairfax Countywide Citizens Ass'n v. Fairfax County, 571 F.2d 1299 (4th Cir.), cert. denied 439 U.S. 1047, 99 S. Ct. 722, 58 L.Ed.2d. 706 (1978), the Fourth Circuit held that a district court was not empowered to enforce a settlement agreement that had terminated litigation which had been pending before it but which had since been dismissed "unless the agreement had been approved and incorporated into an order of the court, or, at the time the court is requested to enforce the agreement, there exists some independent ground upon which to base federal jurisdiction." Fairfax, 571 F.2d at 1303.

As in the case of Kokkonen, the dismissal orders in Fairfax did not mention that the parties had entered into settlement agreements "and they neither approved

nor incorporated either settlement agreement." Fairfax, 571 F.2d at 1301. Based on these facts, when the plaintiffs later moved the district court to enforce the settlement agreements, the Fourth Circuit held that the district court did not have subject matter jurisdiction to enforce a settlement agreement in an action which the court had dismissed with prejudice, when the agreement had not been approved or incorporated into an order of the court, the court had not retained jurisdiction to enforce the agreement, and there was no other independent ground upon which to base federal jurisdiction. Fairfax, 571 F.2d at 1303.

The Fourth Circuit stressed in Fairfax that district courts are courts of limited jurisdiction, and the district court must have proper jurisdiction before it can hear the case or controversy. Id. It further held that the "inherent power" of a district court to enforce settlement agreements presupposes the existence of federal jurisdiction over the case or controversy. Fairfax, 571 F.2d at 1304. Because the case had been dismissed, the settlement agreement was not

incorporated into the order of dismissal and no other grounds for federal jurisdiction were shown, the settlement agreement amounted to nothing more than a private contract between the parties and, as such, "the state court is an appropriate forum for resolving this dispute." Fairfax at 1305, 1303.

The Court of Appeals for the Seventh Circuit similarly ruled in McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) that a district court does not have jurisdiction over a dispute involving a settlement agreement "merely by virtue of having had jurisdiction over the case that was settled." McCall, 777 F.2d at 1185. The McCall court held that there is no inherent federal jurisdiction to enforce agreements to settle federal actions. McCall, 777 F.2d at 1189. Instead, there must be some independent form of jurisdiction for the court, such as the court's deliberate retention of jurisdiction, before the settlement agreement by which the federal case was dismissed will be enforceable in federal court. McCall, 777 F.2d at 1187-1189.

According to the Seventh Circuit in McCall, an

unconditional dismissal of the federal case terminates federal jurisdiction except for the limited purpose of reopening the case and vacating the order of dismissal pursuant to Federal Rules of Civil Procedure, Rule 60(b) ("Rule 60(b)"). McCall, 777 F.2d at 1190. Therefore, the Seventh Circuit held that once the case was dismissed, the federal court no longer had jurisdiction over the matter, unless the court had retained jurisdiction or had an independent reason for jurisdiction. McCall, 777 F.2d at 1187.

To the Seventh Circuit, the settlement agreement was merely a private contractual matter between the parties, and a breach of this agreement or any dispute relating to it would be remediable under a state court action, not federal law, unless diversity jurisdiction existed. McCall, 777 F.2d at 1185-1186.

The Seventh Circuit again addressed whether a district court had jurisdiction to enforce a settlement agreement after it had dismissed the action in United Steelworkers v. Libby, McNeil & Libby, 895 F.2d 421, 423 (7th Cir. 1990). In Steelworkers, the order of the

district court dismissing the action with prejudice was signed by the court and stated that the court had approved the settlement entered into by the parties. The order then dismissed the complaint and counter-claim with prejudice. The Seventh Circuit addressed whether this statement by the district court that the settlement agreement was approved constituted a retention of jurisdiction by the court.

The court applied its reasoning from McCall, and stated that "'Rule 41(a)(2) of the Federal Rules of Civil Procedure does not confer authority on federal district judges to enforce the terms of settlement agreements that may have motivated the parties to seek voluntary dismissal of the suit.'" Steelworkers, 895 F. 2d at 423, quoting McCall, 777 F.2d at 1189. Therefore, if the federal court has jurisdiction over the settlement agreement, it must rest on some other grounds of jurisdiction, such as a retention of jurisdiction over the agreement by the district court. Steelworkers, 895 F.2d at 423. On the facts before it, the Court found that the district court did not retain

jurisdiction in its order and the order did not incorporate the settlement agreement within it. Thus, the Seventh Circuit found that the district court had no jurisdiction to clarify or enforce the agreement. Steelworkers, 895 F.2d at 424.

The Court of Appeals for the Sixth Circuit reached the same conclusions regarding a district court's lack of subject matter jurisdiction to enforce a settlement agreement of an action which the district court had previously unconditionally dismissed in Hinsdale v. Farmers National Bank & Trust Co., 823 F.2d 993 (6th Cir. 1987).

In Hinsdale, the parties signed a stipulation of dismissal with prejudice, even though the formal settlement documents had not yet been drafted or signed. The district court then dismissed the case with prejudice. Later, certain parties filed motions for specific enforcement of the settlement agreement. Hinsdale, 823 F.2d at 994-995. The Sixth Circuit held that the district court had no jurisdiction to enforce a settlement agreement where the parties had stipulated

to a dismissal with prejudice and the court had ordered the unconditional dismissal. Hinsdale, 823 F.2d at 995-996. The court held that the district court's unconditional dismissal of the action with prejudice, without attempting to retain jurisdiction to enforce settlement agreement, terminated the court's jurisdiction except for the limited purpose of reopening and setting aside the judgment of dismissal, pursuant to Rule 60(b). Hinsdale, 823 F.2d at 996.

In Hinsdale, the Sixth Circuit also clarified its previously ruling in Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir.), cert. denied, 429 U.S. 862, 97 S.Ct. 165, 50 L.Ed.2d 140 (1976), which had suggested that district courts have inherent jurisdiction to enforce settlement agreements even if the cases are no longer pending before them. The Hinsdale court made it clear that a district court does not have jurisdiction to enforce a settlement agreement without the action being pending before it, such as having been reopened under a Rule 60(b)(6) motion and the prior unconditional order of dismissal with prejudice being

vacated. Hinsdale, 823 F.2d at 996.

Other Circuit Court of Appeals which have addressed the issue of a district court's jurisdiction to enforce a settlement agreement have also reached the same conclusion: that after an unconditional dismissal of a federal action, a party's available remedies for breach of the settlement agreement are: 1) file a breach of contract action, usually in state court, or 2) request the district court to vacate the dismissal pursuant to Rule 60(b) and reinstate the case to the court's docket. See, e.g., Stipelcovich v. Sand Dollar Marine, Inc., 805 F.2d 599, 605 (5th Cir. 1986) (when federal suit had been dismissed, plaintiff's remedies to enforce breach of settlement agreement were to bring a new suit for breach of the agreement or to move pursuant to Rule 60(b)(6) to vacate the dismissal and reinstate the case); Warner v. Rossignol, 513 F.2d 678, 683 (1st Cir. 1975) (same); Harman v. Pauley, 678 F.2d 479, 481 (4th Cir. 1982) (same).

Requesting the district court to summarily enforce the settlement agreement after an unconditional

dismissal is not one of the party's available options, because the district court lacks subject matter jurisdiction. See Adduono v. World Hockey Ass'n, 824 F.2d 617, 623 (8th Cir. 1987) (there is no inherent jurisdiction to enforce a settlement agreement where the district court failed to incorporate the agreement into the dismissal order or otherwise showed an intent to retain jurisdiction); Village of Kaktovik v. Watt, 689 F.2d 222, 232, n.76 (D.C. Cir. 1982) (citing Fairfax and indicating that there is no inherent jurisdiction to enforce a settlement agreement not made part of the dismissal order). See also Londono v. City of Gainesville, 768 F.2d 1223, 1227 (11th Cir. 1985) ("Absent an independent jurisdictional base, the court had no authority sua sponte to transform Londono's section 1983 claim into a suit seeking the declaration of a contract of settlement and the specific performance thereof.")

It should be noted that in the Eleventh Circuit, a split exists among the district courts in that circuit, with Kent v. Baker, 815 F.2d 1395 (11th Cir.

1987) specifically declining to follow Londono. Moreover, the First Circuit, too, appears in discord, with the courts in U.S. v. Baus, 834 F.2d 1114 (1st Cir. 1987) and Mathewson Corp. v. Allied Marine Industries, Inc., 827 F.2d 850 (1st Cir. 1987) espousing the concept that district courts have inherent power to enforce settlement agreements even when the court already has dismissed the action.

C. Important Policies Regarding the Scope of Federal Court Jurisdiction and the Administration of the Federal Courts Support Review of this Issue.

Thus, a clear conflict exists between the Ninth Circuit and other Circuit Courts of Appeal on the issue of federal subject matter jurisdiction to enforce settlement agreements post-dismissal of the action. This matter is ripe for this Court to review, because federal courts are courts of limited jurisdiction, which may only hear matters properly before them and within their subject matter jurisdiction. The federal courts are already overburdened, and to allow the Ninth Circuit to adopt this concept of inherent jurisdiction

over settlement agreements in all cases that have ever been before a court would, in essence, give district courts jurisdiction in perpetuity over cases. This would allow parties unlimited access to the federal courts, even if a district court no longer has true subject matter jurisdiction over the action, thereby circumventing the United States Constitution, which mandates that federal district courts be courts of limited jurisdiction. Because this issue involves important policies regarding the scope of federal court jurisdiction and access to federal courts, and the conflict in the circuit courts is clear, Kokkonen respectfully suggests this matter is ripe for the Court's review.

VI.

CONCLUSION

For the foregoing reasons, Kokkonen respectfully requests the Court to issue a writ of certiorari so that the Court may address this matter on the merits.

DATED: August 13 1993

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APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MATT T. KOKKONEN, Plaintiff-Appellant, v. GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION, Defendant-Appellee.	CASE NO. 92-16628 D.C. No. CV-90-00325-REC MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Chief Judge, Presiding

Submitted April 27, 1993**

Before: BROWNING, KOZINSKI, and RYMER, Circuit Judges.

Matt T. Kokkonen appeals from the district court's order enforcing a settlement agreement between Kokkonen and the Guardian Life Insurance

Co. Kokkonen contends that the district court lacked subject-matter jurisdiction to issue an order enforcing the settlement agreement because (1) the action was no longer pending before the court at the time it issued the order, (2) the agreement was not incorporated into the order of the court disposing the action, and (3) the court neither explicitly retained jurisdiction nor has an independent basis for jurisdiction to enforce the agreement. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, and we affirm.

The existence of subject-matter jurisdiction is a question of law which we review de novo. Kruso v. International Tel. & el. Corp., 872 F.2d 1416, 1421 (9th Cir. 1989), Cert. denied, 496 U.S. 937 (1990).

A district court has the "inherent power summarily to enforce a settlement agreement with respect to an actin pending before it . . . The authority of a trial court to enter a

judgment enforcing a settlement agreement has as its foundation the policy favoring the amicable adjustment of disputes and the concomitant avoidance of costly and time consuming litigation." Dacanay v. Mendoza, 573 F.2d 1075, 1078 (9th Cir. 1978) (citations omitted); Wilkinson v. Federal Bureau of Investigation, 922 F. 2d 555, 557 (9th Cir. 1991). Thus, the district court may, following its dismissal of an action pursuant to a settlement agreement, enter a subsequent order enforcing the terms of the agreement. See Wilkinson, 922 F.2d at 557.

Here, Kokkonen filed the present action in April, 1991 alleging claims arising out of the termination of his agent's contract with defendant Guardian Life Insurance Company (Guardian) and two other defendants who were dismissed pursuant to stipulation. Guardian filed a cross-complaint against Kokkonen. The action was tried before a jury. Following closing arguments but before the district court

instructed the jury, Kokkonen sought a settlement dismissing his action and Guardian's cross-claims with prejudice. An oral agreement requiring Kokkonen to provide Guardian with certain documents and dismissing the claims and counter-claims between the parties was stated in its entirety on the record before the district court in chambers. On April 13, 1992, the court entered a Stipulation and Order of Dismissal with Prejudice pursuant to the terms of the settlement agreement.

On May 21, 1992, Guardian filed a motion in district court to enforce the settlement agreement against Kokkonen claiming that Kokkonen had failed to produce the required documents and otherwise failed to comply with the terms of the agreement. Following a hearing on the motion, the district court issued an order enforcing the agreement against Kokkonen and ordering him to pay Guardian its fees and cost incurred in filing the motion to enforce

the agreement.

Despite Kokkonen's arguments to the contrary, our holding in Wilkinson is dispositive of the issue of the district court's jurisdiction to enter an enforcement order the sole issue in this appeal. In Wilkinson, the district court dismissed the plaintiff's action pursuant to a settlement agreement. The agreement in that case called for release of the plaintiff's claims against the defendant in exchange for the defendant's production of certain documents. Two months after dismissal of the action, the plaintiff filed a motion to enforce the settlement agreement alleging that the defendant failed to produce documents as required by the agreement. The district court denied the motion and the plaintiff appealed. In affirming the district court's decision, we expressly held that the "district court had jurisdiction to decide the motion [ ] under its inherent supervisory power." 922 F.2d at 557.

Similarly here, the district court properly assumed jurisdiction to decide Guardian's post-judgment motion. See id.

AFFIRMED

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* This disposition is not appropraite for publication and may not be cited to or by the courts of this circuit except as provided by the 9th Cir. R. 36-3.

** The panel unanimously finds this case unsuitable for decision without oral argument. Accordingly, appellee's request for oral argument is denied. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.